IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5460 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VALLABHBHAI KARAMSIBHAI GAMBHAVA

Versus

DISTRICT MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

MR SJ DAVE, AGP for Respondent No. 1,2 & 4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 21/07/2000

ORAL JUDGEMENT

This petition under Article 226 of the Constitution of India challenges the order of detention dated 14-4-2000 which has been passed by the District

Magistrate, Rajkot, in exercise of powers under Sec.3(2) of the Prevention of Black Marketing and Maintenance of Supply of Essential Commodities Act, 1980 (`the Act' for short) against the petitioner with a view to prevent him from black marketing of essential commodities like kerosene and acting in any manner prejudicial to the maintenance of supplies of essential commodities such as kerosene essential to the community.

2. During the pendency of this petition, petitioner has filed Civil Application No.5275 of 2000 praying for amending the petition. Same was allowed and ground Nos.4(g)(1) to 4(g)(3) were added in the petition.

3. I have heard learned advocates for the respective parties. Learned advocate for the petitioner, Mr.Y.S.Lakhani has restricted his argument only on the point that the petitioner has made a written representation through his advocate on 23-5-2000 to the jail authority requesting to forward it to the authorities namely, District Magistrate, Rajkot; Secretary, Food and Civil Supplies Department, State of Gujarat; Secretary, PBM Advisery Board and Shri S. Nautiyal, Additional Secretary, Union of India, but the jail authority has sent back copy of said representation stating that the representation which is to be sent to the Union of India is necessary to be sent in English language and letter to that effect was also written by the Superintendent, Central Jail, Surat to the advocate of the detenu on 29-5-2000. To support his arguments, he has produced copy of the letter which has been produced by the petitioner with this petition at page 23. Learned advocate for the petitioner has further argued that jail authority is only a channel through whom the representation is to be sent to all concerned as stated in the grounds of detention and under the circumstances, continued detention of the petitioner is bad in law.

4. I have gone through the said letter dated 29-5-200 annexed with the petition which shows that on receiving the representation of the petitioner, Superintendent, Central Jail, Surat had written to the advocate of the petitioner stating the above facts. It appears that the representation which has been sent by the petitioner through jail authority for forwarding the same to the Central Government has not been forwarded to the Central Government. It was the duty of the jail authority to have forwarded the said representation to the Central Government as early as possible because he is the proper authority in channel through whom said representation has to be sent by the detenu. Instead of

forwarding the representation, jail authority has asked for translated version of the representation and, therefore, rights of the petitioner under Article 22(5) of the Constitution of India are violated.

5. Apex Court has held in a case of Rajammal Vs. State of Tamil Nadu and another, AIR 1999 S.C. 684 that delay of five days caused on account of absence of Minister at headquarters was not sufficient to justify the delay in considering and disposing detenu's representation. Here in this case, there is a gross negligence on the part of jail authority in not forwarding the representation to the Central Government. It appears that no affidavit has been filed either by the detaining authority or the State of Gujarat controverting the above facts. It was observed in a judgment delivered by this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and Ors. reported in 2000(1) G.L.H. 393 as under:

> "Before parting with the matter, we may observe that recently, we have come across few cases wherein no counter-affidavits are filed by the respondents. It is settled law that whenever an order of detention is challenged by a detenu or by his "next friend", it is the duty of the authorities to justify the action by filing counter-affidavit preferably by the detaining authority himself, unless there are circumstances which may justify filing of affidavit by an officer or authority other than the detaining authority".

Since no affidavit has been filed by any of the respondents controverting the above facts, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

6. The petition is allowed. The impugned order of detention dated 14-4-2000 passed by the District Magistrate, Rajkot against the detenu is hereby quashed. The detenu-Vallabhbhai Karamsibhai Gambhava is set at liberty forthwith, if not required to be detained in any other case. Rule is made absolute with no order as to costs.

(R.P.DHOLAKIA,J.)

RADHAN/